# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 20509 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MALSAMOT DEVELOPMENT CO OP HOUSING SOCIETY LTD. & 1 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR CHIRAG B PATEL for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 07/10/2005**

**ORAL JUDGMENT**

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner society has challenged the legality and validity of the judgment and order passed by the Additional Secretary

(Appeals), Revenue Department, State of Gujarat dated 31.3.2004 / 14.6.2004 passed in Revision Application No.45 of 1997 in dismissing the same and confirming the order passed by the Collector, Bharuch dated 16.7.1997 in forfeiting the land in question to the State Government as the members of the petitioner society have failed to put up any construction on the land in question and thereby the purpose for which the land was allotted to the society is not achieved.

2. The land admeasuring 303 acres and 30 gunthas situated at village Mal Samot, Taluka Dediyapada was allotted to the petitioner No.1 society pursuant to the Government Resolution of the State Government dated 29.3.1957 for the purpose of construction of residential houses. As it was found that not a single member of the petitioner No.1 – society had put up any construction on the land allotted by the State Government, the proceedings were initiated by the Collector, Bharuch to forfeit the land in question to the State Government and a show cause notice was issued on 23.12.1982 and after giving an opportunity

to the petitioner No.1 society, an order came to be passed on 28.1.1983 forfeiting the land to the State Government by holding that the purpose for which the land in question came to be allotted to the society, no efforts are made by the members of the society to achieve the same i.e. to put up the residential houses. It appears from the record that being aggrieved and dissatisfied with the said order passed by the Collector, Bharuch dated 28.1.1983, the petitioner society preferred Revision Application before the State Government and the Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 31.5.1983 allowed the said revision application No.200 of 1983 and remanded the matter to the Collector, Bharuch for deciding the same afresh on merits by quashing ans setting aside the order dated 28.1.1983 passed by the Collector, Bharuch. Thereafter on remand, after giving an opportunity to the petitioners and after considering their reply and having held necessary inquiry and considering the report submitted by the Mamlatdar, the Collector found and held that not a single member

of the petitioner No.1 – Society has put up any construction for residential purpose inspite of the fact that 40 years have elapsed and accordingly, passed the order dated 16.7.1997 forfeiting the land to the State Government. Being aggrieved and dissatisfied with the order passed by the Collector, Bharuch dated 16.7.1997, the petitioners preferred the revision application before the Additional Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 31.3.2004 and 14.6.2004 dismissed the said revision application confirming the order passed by the Collector, Bharuch dated 16.7.1997 forfeiting the land in question to the State Government. Being aggrieved and dissatisfied with the judgment and order passed by the revisional authority dated 31.3.2004 / 14.6.2004 passed in Revision Application No.45 of 1997 in dismissing the same and confirming the order passed by the Collector, Bharuch dated 16.7.1997, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri B.S.Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that both the authorities below have materially erred in not properly appreciating the cause for not putting up construction on the land in question and that has resulted into miscarriage of justice. It is also further submitted by Shri Patel that as the proposal for declaring the said place as tourist place was pending before the State Government and there were no proper facilities for road, water etc and therefore, it was not possible for the members of the petitioner No.1 society to put up construction and this aspect has not been properly appreciated and dealt with by the both the authorities below and therefore, it is requested to allow the present special civil application. It is also further submitted that the revisional authority has not considered all the submissions which were made on behalf of the petitioners and the revisional authority has deal with some of the submissions and therefore also, it is requested to allow the present

special civil application.

4. It is also required to be noted that the land in question which is a big parcel of land admeasuring Acres 303 – 30 Gunthas which was allotted to the petitioner society for the purpose of putting up residential houses as far as back on 29.3.1957 and till 1997 not a single member of the petitioner society had put up any construction for residential purpose and / or any other construction and the land in question is kept as it is which was there at the time of allotment i.e in the year 1957. It is also required to be noted that initially the proceedings were initiated in the year 1983 and the order was passed by the Collector, Bharuch in the year 1983 forfeiting the land in question which was set aside by the revisional authority and the matter was remanded to the Collector, Bharuch in 1983 and even thereafter also, no efforts have been made by any of the members of the petitioner No.1 society to put up construction. There is nothing on record to show that even the society has made any representation and / or

submitted any application pointing out the difficulties faced by them. The reasoning given by the petitioners that there was no proper facilities for transportation and roads etc and therefore, they could not put up construction is concerned, the same is dealt with by the Collector in its order as well as the learned Secretary (Appeals), Revenue Department, State of Gujarat and it is observed that there are construction put up by the District Panchayat and therefore, the reasons given by the petitioners are only lame excuses and the same has not been accepted by both the authorities below. Considering the fact that after a period of almost 40 years of allotment, there is no construction whatsoever put up by any of the members of the petitioner No.1 – society and the land was allotted for the purpose of allowing the members of the society to put up residential houses and the said purpose is not fulfilled and therefore, the Collector, Bharuch is justified in forfeiting the land to the State Government by holding that the purpose for which the land was allotted is not

achieved its object and the same is rightly confirmed by the Secretary (Appeals), Revenue Department. The orders passed by both the authorities below cannot be said to be in any way illegal or perverse and / or arbitrary which requires any interference by this Court while exercising the powers under Articles 226 and 227 of the Constitution of India.

5. Under the circumstances, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

[ M.R.Shah, J. ]

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